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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

IRIS M. MAITER, ET AL.,
Petitioners,

vs.

CHICAGO BOARD OF EDUCATION, ET AL., and DISTRICT # 21 PARENT EDUCATION COUNCIL, ET AL.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

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QUESTIONS PRESENTED

1. Whether the Chicago Board of Education's use of local school council "nominating committees" in the selection of principals, where such committees use race as a criterion to exclude qualified persons from the position, is a violation of equal protection rights under the Fourteenth Amendment.

2. Whether it is a denial of due process for the Illinois Supreme Court to have foreclosed petitioners' rights to trial on the merits of their claim that they were denied a position as principal because of racial discrimination.

3. Whether the retroactive application of Section 34-8.2 of the Illinois School Code, which was held to abolish rank order appointments of principals and exhaustion of eligibility lists in chronological order, deprives the petitioners of due process, where they had been placed on eligibility lists and appointments had been made in rank order from said lists since the 1917 enactment of Sections 34-83 and 34-84, which have remained unchanged since 1917.

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The petitioners, Iris M. Maiter, Sylvia Asllani, Joseph M. Bechina, Ruth Goldrich, Alma M. Heck, John Jones, Bernard Karlin, Norman Kremen, Winifred M. Szpara Markowski, Dorothea Moderhock, Judith L. Baker, Frederick Barth, Eleanor Brazier, James Bernero, Marilyn Bessler, Fred W. Delaney, June C. Dudeck, Marjorie A. Dwy, Elizabeth A. Evan, Edith B. Edington, Samuel L. Dolnick, James Ahern, Samuel Altshuler, Jeannette Anderson, Louis Asher, James Bailey, Sonja Becvar, Jewel Beifuss, Dorothy Berg, and Bruce Berndt, respectfully pray that a writ of certiorari be issued to review the judgment and opinion of the Supreme Court of the State of Illinois entered in this proceeding on October 17, 1980.

OPINION BELOW

The opinion of the Supreme Court of the State of Illinois, not yet reported, appears in the Appendix hereto. The opinion of the Appellate Court of the State of Illinois, First Judicial District, is reported at 77 Ill. App. 3d 389, 395 N. E. 2d 1162.

JURISDICTION

The judgment of the Supreme Court of the State of Illinois was entered on October 17, 1980. A petition for rehearing was denied on November 26, 1980, and this petition for certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U. S. C. § 1257(3).

STATUTORY PROVISIONS INVOLVED

Constitution of the United States, Amendment XIV, Section 1 (in pertinent part):

> ". . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Ill. Rev. Stat., 1975 Ch. 122, Sec. 34-83:

> "A board of 3 examiners shall examine all applicants required to hold certificates to teach and the board of education shall issue gratuitously to those who pass a required test of character, scholarship and general fitness, such certificates to teach as they are found entitled to receive. The board of examiners shall consist of the general superintendent of schools and 2 persons approved and appointed by the board of education upon the nomination of the general superintendent of schools. The board

of examiners shall hold such examinations as the board of education may prescribe, upon the recommendation of the general superintendent of schools and shall prepare all necessary eligible lists, which shall be kept in the office of the general superintendent of schools and be open to public inspection. Members of the board of examiners shall hold office for a term of 2 years."

Ill. Rev. Stat., 1975, Ch. 122, Sec. 34-84:

"*Appointments and promotions of teachers, principals and other educational employees shall be made for merit only,* and after satisfactory service for a probationary period of 3 years (during which period the board may dismiss or discharge any such probationary employee upon the recommendation, accompanied by the written reasons therefor, of the general superintendent of schools) appointments of teachers and principals shall become permanent, subject to: (1) termination by compulsory retirement at the age of 65 years; (2) the rules of the board concerning conduct and efficiency; and (3) removal for cause in the manner provided by Section 34-85.

"When any teacher or principal who has been promoted to the position of assistant or district superintendent or a member of the board of examiners is relieved of the duties of such position, he shall be reinstated in the position from which he was promoted.

" 'Teachers and principals' as used in this article means all members of the teaching force except the general superintendent of schools, assistant and district superintendents and members of the board of examiners." (Emphasis added.)

Ill. Rev. Stat., 1979, Ch. 122, § 34-8.2:

"A. Before the general superintendent shall recommend or the board shall vote on the appointment of a principal, the general superintendent and board may obtain the nomination of a person or persons to fill the position of principal by a local nominating committee.

"B. A local nominating committee, when authorized by board rules and regulations, may consider, interview and nominate only those persons for the position of principal who appear on the appropriate eligibility list prepared by the board of examiners or those principals who consent to be considered for a transfer. The recommendations of the local nominating committee shall not discriminate against any person based upon race, color, creed, national ancestry, sex, ethnic heritage or religious beliefs.

"C. The board may adopt rules and regulations regarding the formation of and procedures to be followed by local nominating committees; these rules and regulations shall assure that at least 60% of the members of each committee shall be parents or guardians of children in the affected school.

Added by P. A. 80-879, § 1, eff. Oct. 1, 1977."

STATEMENT OF THE CASE

On June 12, 1975, the petitioners herein brought a declaratory judgment action in the Circuit Court of Cook County, Illinois, for a finding that the rules and procedures established and employed by the Chicago Board of Education[1] for the appointment and promotion of principals were in violation of Section 34-84 of the School Code of Illinois, Ill. Rev. Stat. 1975, Ch. 122, § 34-84, and that the practices and procedures employed by the Board violated the due process and equal protection provisions of the Fourteenth Amendment of the United States Constitution and Section 2 of Article I of the Constitution of Illinois of 1970. The petitioners also sought an order directing that all appointments to the position of principal be made in rank order from eligibility lists prepared by the Board of Examiners. (C-8, 9.)

Petitioners Maiter, Asllani, Bechina, Goldrich, Heck, Jones, Karlin, Kremen, Makowski and Moderhock are persons whose names appeared on the 1970 eligibility list for principal in the Chicago Public Schools.

Petitioners Baker, Barth, Brazier, Bernero, Bessler, Delaney, Dwy, Evan and Edington are persons whose names appeared on the 1974 eligibility list for the position of principal.

Petitioners Dolnick, Ahern, Altshuler, Anderson, Asher, Bailey, Becvar, Beifuss, Berg and Berndt are persons who had already been appointed to the position of principal.

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[1] The Respondents, Chicago Board of Education and the General Superintendent of Schools, will hereinafter be referred to collectively as "the Board". The remaining Respondents, District #21 Parent Education Council, Gwendolyn Cosby, Iona Bell, Midwest Community Council, Nancy Jefferson, William K. Sullivan School P.T.A., Frances Garcia, Pilsen Neighbors Community Council, Raquel Guerrero, Northwest Community Organization, Lake View Schools Coalition, Nancy Rodinski, Joan Arai Middle School Parents' Council, Laura Grace and Penny Kajiwara, will hereinafter be referred to collectively as "intervenors".

The suit was precipitated by an action of the Board whereby it changed the procedures employed in the promotion of persons to the position of principal, totally eliminating rank order appointments. There was no change in the statutes although the change in the Board's procedures changed practices of the Board which had been in existence for more than 53 years, since the enactment of Sections 34-83 and 34-84 of the School Code of Illinois. Ill. Rev. Stat. 1975, Ch. 122, §§ 34-83 and 34-84.

Sections 34-83 and 34-84 were enacted in 1917 as part of the "Otis Law" in an effort to do away with the partisanship, favoritism and cronyism which had existed in the principal selection process. The Board at that time had unfettered discretion in making such appointments, and one Board member had "openly offered the district superintendencies to Board members for their friends". Herrick, "The Chicago Schools, a Social and Political History," (Sage Publications, 1971), p. 128. Sections 34-83 and 34-84 mandated that appointments and promotions of principals be made for merit only and established a Board of Examiners to examine all applicants and to prepare and establish all necessary eligibility lists. The examiners prepared an eligibility list in which rank on the list was predicated upon the scores which applicants received on the examinations. (C-23, 198.)

On March 25, 1970, the Board had adopted procedures calling for the involvement of "local communities" in the selection of principals. In implementing that procedure, the Board required ". . . that the number of principal candidates on the eligibility list, in order of rank on the list, equal to the number of principalship vacancies being considered be rotated among each school selection committee for consideration." (C-110) Thus, principals were still appointed in rank order, as they had been since 1917, the rank order being the determinant of which names were circulated among the community committees. (C-110.)

On October 14, 1970, without any change in the language of the enabling legislation, the Board abolished rank order appointments by adopting the following recommendation:

> "Rank on eligibility list should not be considered in presenting new principal candidates to school interviewing committees nor in the assignment of principals from the eligibility list. (Board Report 70-926-2, C-110.)"

Under the School Code, the Board of Examiners is the only official body established for determining the qualifications of candidates for principal, although the Board of Examiners is involved neither in establishing criteria to be applied by the local school councils, nor in selecting persons to serve on the nominating councils. (C-219.)

According to the deposition of the deputy superintendent, the eligibility lists from 1970 and 1974 were commingled and persons from either list could apply for appointment to a particular vacancy. Not all of the persons who apply are interviewed and it is the nominating committees and the District Superintendent who decide on which persons they will interview. (C-222-224.) Each nominating committee has a different way in which it decides whom to nominate and there are no particular criteria for how votes are to be taken. (C-225, 226.)

Since the inception of the nominating committees, principals have been appointed only with the approval of a nominating committee, except for three instances, in which there was no local school council, a school chose not to participate and a committee failed to make a selection within 5 months. (C-312.)

The plaintiffs, petitioners herein, alleged that appointments were made from the 1974 eligibility list before exhausting the 1970 list and that of 48 appointments made since January 2, 1975, only one had been appointed from the 1970 list, although 25 candidates were still on that list. (C-6.)

In addition, the petitioners alleged that the nominating committees used race as a criterion, resulting in discrimination against both black and white candidates for the position of principal. From the 1970 eligibility list, out of the first 70 appointments to schools with a student body that was more than 50 per cent black, 65 of the principals appointed were also black. Out of all of the appointments made from the 1970 eligibility list, in 20 schools where the population was white, not one black applicant was appointed principal. The complaint further alleged that, from the first 48 appointments from the 1974 eligibility list, not one white principal had been appointed to a predominantly black school and not one black had been appointed to a predominantly white school. The petitioners further alleged that making the appointments pursuant to the recommendations of the nominating committees fostered a clear pattern of segregation. (C-6-8.)

After discovery had been taken and documents produced, the petitioners herein filed a motion for summary judgment. While the motion was pending, the trial court granted leave to various groups and individuals to intervene and, on December 20, 1976, the trial court entered a judgment order which provides, in part, as follows (C-701.):

> "1. That appointment of a person to the position of principal is to be made on the basis of merit, as required by Ill. Rev. Stat. Ch. 122, § 34-84.
>
> "2. That rank order on the principals' eligibility examination need not be used by the Board as the sole criteria of merit in the appointment of principals to individual schools, provided however, that until a uniform system of community input is established appointments to (sic) principals shall be in rank order commencing with appointments in rank order from the oldest existing principal list (1970)."

Both the petitioners herein and the intervenors appealed, the petitioners appealing from that portion allowing the elimination of rank order appointments, and intervenors appealing

from that portion requiring rank order appointment "until a uniform system of community input is established". The intervenors subsequently withdrew their appeal.

On appeal, the Illinois Appellate Court, First Judicial District, reversed and remanded with directions to enter an order requiring both rank order appointment from the eligibility lists and exhaustion of the 1970 list before proceeding to any subsequent list. (77 Ill. App. 3d 389.)

The Board and the intervenors sought, and were granted, leave to appeal to the Illinois Supreme Court. While the appeal was pending in the Appellate Court, the Illinois School Code was amended to permit the utilization of local nominating committees in the appointment of principals. (Ill. Rev. Stat. 1979, Ch. 122, § 34-8.2.) Sections 34-83 and 34-84 of the School Code remained unchanged.

Finding that Section 34-8.2 was to be retroactively applied, the Illinois Supreme Court reversed the appellate court and affirmed the judgment of the circuit court, except insofar as it required appointments in rank order "until a uniform system of community input is established." (Slip. op. at p. 13.) The court below also found that the intervenors had a "recognizable right", although it did not define the nature of that right. (Slip op. at p. 4.) The court below did not define what effect, if any, the term "appropriate eligibility list" in Section 34-8.2 has on the petitioners' claim that the earlier eligibility list was to be exhausted. Nor did it consider the factual issue regarding the petitioners' claim that the procedures followed by the Board and the nominating committees are racially discriminatory.

The petitioners sought a rehearing in the Illinois Supreme Court and that petition was denied on November 26, 1980.

REASONS FOR GRANTING THE WRIT

I. THE REFUSAL OF THE COURT BELOW TO REMAND THE CAUSE TO THE TRIAL COURT DENIES THE PETITIONERS THEIR RIGHT TO BE HEARD ON THEIR CLAIM THAT THE BOARD'S PRACTICES IN APPOINTING PRINCIPALS PURSUANT TO THE RECOMMENDATIONS OF THE NOMINATING COMMITTEES HAVE A RACIALLY DISCRIMINATORY EFFECT, FOSTERING A CLEAR PATTERN OF SEGREGATION.

The lower court's failure to remand this case to the trial court for resolution of the remaining fact issues has effectively denied petitioners access to the courts for the purpose of proving, and seeking relief from, the alleged racially discriminatory practices of the Board. Having thus closed the door to the courts, the lower court has denied the petitioners their right to equal protection and due process of law.

The petitioners' complaint in the trial court focused on two aspects: (1) the absence of statutory authority for the Board's use of nominating committees and elimination of rank order appointment from the eligibility lists; and (2) the nominating committee's use of race as a criterion and the absence of other standards to structure their deliberations which has led to the racially discriminatory appointment of principals that fosters racial segregation.

The former question is one of interpretation of Illinois statutes and was the basis for the petitioners' motion for summary judgment in the trial court. Had the court agreed with the petitioners' contention, that the Board had no statutory authority to eliminate rank order appointment and make appointments on the basis of the recommendations of nominating committees, there would have been no need to consider the constitutional aspect of the petitioners' claim. Had the

petitioners' motion been denied, the case would have proceeded to the factual issues regarding the claim of discriminatory practices.

In a classic example of a Pyrrhic victory, the petitioners were granted their motion for summary judgment in an order which affirmed the rank order appointment procedure but nevertheless added a compromise provision which also allowed the use of nominating committees. In addition, although the trial court purported to rule in the petitioners' favor, it afforded them none of the affirmative relief they had sought.

The ambiguity in the trial court's order prompted an appeal by both the petitioners and the intervenors. Following the appellate court's ruling that the Board's actions exceeded its statutory authority and that the petitioners were entitled to relief, the intervenors and the Board appealed to the Illinois Supreme Court. That court reversed the appellate court and affirmed the trial court's order, but reversed the trial court's order with regard to rank order appointment.

The order of the Illinois Supreme Court was an ultimate denial of the petitioners' motion for summary judgment, yet, incredibly, that court refused to remand the cause to the trial court, although the remaining issues were emphatically reiterated in the petition for rehearing.

This Court has recognized that the allocation of a school system's faculty and staff according to racial criteria violates the Constitution. In *Swann* v. *Charlotte-Mecklenburg Board of Education,* 402 U. S. 7, at 19, 91 S. Ct. 1267, at 1277 (1971) the Court stated:

> "Independent of student assignment, where it is possible to identify a 'white school' or a 'Negro school' simply by reference to the racial composition of teachers and staff . . . a *prima facie* case of violation of substantive constitutional rights under the Equal Protection Clause is shown."

Indeed, this Court has expressed its belief that policies regarding faculty and staff are "among the most important indicia of a segregated system". *Swann,* 402 U. S., at 19, 91 S. Ct., at 1277, citing *Green* v. *County School Board of New Kent County, Virginia,* 391 U. S. 430, 435, 88 S. Ct. 1689, 1693 (1968).

The basic difference between *Swann* and *Green* and the instant case is that the petitioners have been denied the opportunity to prove their allegations of racial discrimination in the selection of principals in the Chicago Public Schools. The opportunity to be heard is a fundamental requirement of due process. *Grannis* v. *Ordean,* 234 U. S. 385, 394, 34 S. Ct. 779, 783 (1914). Furthermore, as this Court stated in *Cincinnati Street R. Co.* v. *Snell,* 193 U. S. 30, 36-37, 24 S. Ct. 319, 321 (1904):

> "It is not . . . the mere tribunal into which a person is authorized to proceed by a State which determines whether the equal protection of the law has been afforded, but whether in the tribunals which the State has provided equal laws prevail."

Equal laws have not prevailed in this case, nor have the Illinois courts allowed the petitioners the opportunity to be heard. If the Board were to use race as a criterion in appointing principals, its actions would clearly be violative of the Constitution. By refusing petitioners the opportunity to prove their allegations, the Illinois Supreme Court has allowed the Board to continue its practice of accepting the recommendations of nominating committees, recommendations based on race, and thereby has allowed the Board to do indirectly what the Constitution bars it from doing directly.

The claims of racial discrimination resulting from the Board's appointing principals according to the recommendations of local nominating committees, each with a different way of arriving at its conclusion, have never been resolved. Had the petitioners not moved for summary judgment, those claims would have been heard. Had the trial court denied summary

judgment, those claims would have been heard. That the petitioners should be barred from being heard on those claims, simply because the highest court of the State of Illinois refused to consider the case in its entirety and frame its judgment accordingly, clearly denies the petitioners of due process and equal protection, and needs the intervention of this Honorable Court.

II. THE RETROACTIVE APPLICATION OF SECTION 34-8.2 OF THE ILLINOIS SCHOOL CODE DENIED PETITIONERS OF A PROPERTY INTEREST WITHOUT DUE PROCESS OF LAW.

The court below held that the addition of Section 34-8.2 to the School Code abolished the rank order appointment requirement and also allowed the appointment of persons from later eligibility lists without requiring exhaustion of the earlier ones. Furthermore, the court below held that Section 34-8.2 was to be retroactively applied, because the possession of a valid certificate pursuant to examination by the Board of Examiners does not constitute an entitlement to a principalship. Petitioners submit that an entitlement does exist and is therefore subject to the protection of the Fourteenth Amendment.

The Illinois Supreme Court found that it was merely considering the procedure of appointing principals and that "there exists no vested right in any particular mode of procedure." (Slip. op. at p. 11.) However, that court's finding is not dispositive of the question, for it is federal constitutional law which determines whether an interest is a legitimate claim or entitlement. *Board of Regents of State Colleges* v. *Roth,* 408 U. S. 564, at 577, 92 S. Ct. 2701, at 2705 (1972); *Perry* v. *Sindermann,* 408 U. S. 593, at 602, 92 S. Ct. 2694, at 2700, 33 L. Ed. 2d 570 (1972).

In *Roth,* 408 U. S. at 577, 92 S. Ct. at 2709, this Court stated:

> ". . . to have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. . . .
>
> "Property interests . . . are created and their dimensions defined from existing rules or understandings that stem from an independent source such as state law. . . ."

Applying these principles in *Perry,* this Court held that, notwithstanding the absence of a contractual tenure provision, a professor whose contract was not renewed was entitled to the protection of procedural due process based on allegations that the policies and practices of the college constituted a *de facto* tenure system.

As in *Perry* v. *Sindermann,* the Illinois statutes and the practices of the Board since 1917 created a property interest in appointment to the position of principal. That interest is clearly defined and stems from Sections 34-83 and 34-84, their legislative history and the Board's consistent application for more than 53 years.

Prior to 1917 the Board of Education enjoyed unfettered power to hire and fire educational employees. It established the criteria for eligibility for appointment and it enjoyed the absolute right to decline to employ or reemploy any applicant for any reason or for no reason at all. *Fursam* v. *City of Chicago,* 278 Ill. 318 (1917).

At that time, partisanship and cronyism were rampant. On September 1, 1915, Board member Jacob Loeb sponsored the regulation upheld by the Court in *Fursam* which forbade "membership by teachers in organizations affiliated with a trade union, or a federation or association of trade unions, as

well as teacher organizations which have officers, business agents or other representatives who are not members of the Board." Herrick, "The Chicago Schools, a Social and Political History," (Sage Publication, 1971), p. 122. On June 27, 1916, the date set for Board action on determining which teachers would be hired for the following year, sixty-eight teachers failed to be rehired. These included three district superintendents, four of the six elected teacher pension trustees, all of the officers of the Chicago Teachers Federation, and Federation delegates to the Chicago and Illinois State Federations of Labor. Every one of those teachers had superior, excellent, or good ratings or were Federation members who had been promoted to be principal or District Superintendent. Herrick, "The Chicago Schools, a Social and Political History," (Sage Publications, 1971), p. 128. It was noted that "Loeb openly offered the district superintendencies to Board members for their friends." *Id.*, p. 128. It was in this context that the Illinois legislature considered the Otis Law, which added what are now Sections 34-83 and 34-84 of the School Code.

When the legislature approved the language of Section 34-84 which requires that "appointments and promotions of teachers, principals, and other educational employees shall be made for merit only . . . " it was seeking to do away with the evils of partisanship, favoritism and cronyism which were then inherent in the selection process. Only through competitive examinations which were open to everyone and where obtaining the position was measured by success on the examination and not by success with a Board member could this situation be remedied.

The legislature knew what the term "merit appointment" meant. The meaning of the phrase had been the subject of litigation in this jurisdiction as well as other jurisdictions. *Rogers* v. *Common Council of Buffalo, et al.*, 123 N. Y. 173 (1890); *People ex rel. Akin* v. *Kipley*, 171 Ill. 44, 49 N. E. 229, 41 L. R. A. 775 (1898). "Merit appointment" meant, and means, rank order appointments from eligibility lists prepared by the Board of Examiners.

The Board also knew what was meant by "merit appointment." From the passage of the Otis Law in 1917 until the Board decided to defer to local groups in the appointment of principals in late 1970, it made appointments to the position of principal in rank order, exhausting eligibility lists in chronological order. The change made in 1970 was made without any change in any statutes and it was not until 1977 that the Board was given the authority in Section 34-8.2 to appoint nominating committees. Nevertheless, the mandatory provisions of Sections 34-83 and 34-84 remained unchanged.

Under these circumstances, the petitioners were entitled to be appointed to the position of principal, in order of their rank on the eligibility lists as vacancies arose. The Board had recognized this in its earliest use of nominating committees, circulating names in rank order for consideration by the committees. (C-110.)

The petitioners had every reason, indeed, they had the right, to expect appointment according to the long-established procedures. The Board unilaterally decided otherwise, without statutory authority. The Illinois courts have now ruled that rank order appointment has been retroactively obliterated by the enactment of Section 34-8.2, although the legislature made no such specific statements and never so much as referred to Sections 34-83 and 34-84 in considering Section 34-8.2.

It is the nature of the interest at stake which determines the existence of a protectable right. *Roth,* 408 U. S. at 570-571, 92 S. Ct. at 2705. The nature of the interest here is not a mere procedure, but the entitlement to positions that the Board, by its practice of more than 53 years, had led petitioners to believe would be allotted to them in order of their rank on the eligibility lists. Under the rulings of *Perry* and *Roth,* the petitioners have raised a valid claim of a protectable property right, a claim which arises from the Fourteenth Amendment and should therefore be considered by this Court.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Supreme Court of the State of Illinois.

Respectfully submitted,

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APPENDIX

Docket Nos. 52787, 52788 cons.—Agenda 61—May 1980.
IRIS M. MAITER *et al.*, Appellees, v. CHICAGO BOARD OF EDUCATION *et al.*, Appellants.

MR. JUSTICE RYAN delivered the opinion of the court:

The plaintiffs, principals in the Chicago public school system and individuals on the 1970 and 1974 eligibility lists for principal, as determined by the board of examiners (Ill. Rev. Stat. 1977, ch. 122, par. 34—83), filed a complaint against the defendant Chicago board of education (the board of education) on June 12, 1975. The trial trial court permitted certain interest groups and individuals to intervene as defendants. The nature of the interests of the intervenors is discussed later. The selection of the principals for the Chicago public school system is governed by section 34—84 of the School Code (Ill. Rev. Stat. 1977, ch. 122, par. 34—84), which provides that principals are to be selected "for merit only." The plaintiffs contend this requires appointment by "rank order" as determined by the score assigned the prospective principal candidates by the board of examiners. Starting in 1970, the board of education adopted procedures establishing "nominating committees of local school councils" in order to involve local communities in the selection of school principals. The committees were established without any statutory authority, and "rank order" was no longer the sole criteria used to select principals. On December 20, 1976, pursuant to the plaintiffs' motion for summary judgment, the trial court entered a judgment order requiring that all principals be selected by "rank order" until such time as the board of education adopted "a uniform system of community input." The trial court order also provided that rank order need not be the sole criteria of merit. On September 28, 1976, the trial court entered an additional order permitting members of community organizations and school parents councils to intervene. The appellate court reversed the circuit court's order providing that rank order need not be used by the board of education as the sole criteria of merit, and it remanded with

directions that the board of education make appointments to the position of principal in rank order from eligibility lists prepared by the board of examiners. (77 Ill. App. 3d 389.) We granted leave to appeal.

Prior to 1917, the Chicago board of education had plenary power to determine the character and fitness of applicants for appointment as principals of the various schools. As the trial court stated, the so-called Otis Law was passed in 1917 in order to do away with favoritism, partisanship, and cronyism in the selection of principals. The Otis Law provided in part that "[a]ppointments and promotions of teachers, principals and other educational employees shall be made for merit only ***." (Ill. Rev. Stat. 1975, ch. 122, par. 34-84.) Also, a board of examiners was created to examine all applicants and to prepare and establish all necessary eligibility lists. (Ill Rev. Stat. 1975, ch. 122, par. 34-83.) From 1917 until 1970, the board of education made appointments of principals and teachers in "rank order" from an eligibility list compiled pursuant to examinations given by the board of examiners.

On March 25, 1970, the board of education adopted procedures calling for the involvement of local communities in the selection of principals and established nominating committees of local school councils. Pursuant to these procedures, the committees were first only given the names of present principals who desired to transfer to the schools where there were vacancies. If all potential transferring principals were rejected by a committee, it was given a second list of candidates from the eligibility list in rank order. The committees rated the candidates in order of preference, and the board of education attempted to honor the requests. On October 14, 1970, the board of education adopted procedures whereby the rank on the eligibility list would not be considered either in presenting candidates to the nominating committees or in the assignment of principals.

This suit was filed on June 12, 1975. The plaintiffs argued that fitness to be a principal is to be determined by the board of examiners and that the board of education has purely a ministerial duty in selecting principals in rank order from the eligibility list compiled by the board of examiners. The plaintiffs sought a declaratory judgment that the rules and procedures establishing the local nominating committees were in violation of the School Code, the fourteenth amendment of the United States Constitution, and section 2 of article I of the Illinois Constitution. Pursuant to plaintiffs' motion for summary judgment, the trial court entered its judgment order on December 20, 1976. The order reviewed the history of the applicable statutes and found that rank-order appointment of principals was abhorrent because it precluded community input. However, the trial court ordered that principals were to be selected by rank order until such time as the board of education was able to establish a uniform system of community input. The court stated:

> "2. That rank order on the principals' eligibility examination need not be used by the Board as the sole criteria of merit in the appointment of principals to individual schools, provided however, that until a uniform system of community input is established appointments to principals shall be in rank order commencing with appointments in rank order from the oldest existing principal list (1970)."

The intervenors appealed from that portion of the order requiring the board of education to appoint principals in rank order until such time as a uniform system of community input was established. On April 13, 1977, the board of education, in an attempt to comply with the trial court's order, adopted Board Report 77—156—46, which established uniform procedures for community participation in the principal-selection process. The intervenors' appeal was dismissed by the appellate court because of mootness.

The plaintiffs appealed from the portion of the trial court's order providing that "rank order" need not be the sole criteria of merit in the appointment of principals, and from the order of September 28, 1976, permitting the members of community organizations and school parents councils to intervene. Before this case was heard by the appellate court, the Illinois legislature added section 34—8.2 to the School Code for cities of over 500,000 inhabitants. (Ill. Rev. Stat. 1979, ch. 122, par. 34—8.2.) This provision specifically provides for the use of local nominating committees in the selection of principals and is set out and considered later in this opinion. Section 34—84 of the Code, requiring appointment "for merit only," remained unchanged. The appellate court held that section 34—8.2 of the School Code did not repeal or amend the requirement of rank-order appointment as contained in section 34—84, and that it was possible for local nominating committees to coexist with a system of rank-order selection.

The first issue presented for review is whether the trial court erred in permitting members of community organizations, school parents councils and individual school parents to intervene in this suit. The intervention statute (Ill. Rev. Stat. 1975, ch. 110, par. 26.1) provided that anyone shall be permitted as of right to intervene whenever the representation of his interests by existing parties may be inadequate and he may be bound by any judgment, decree or order entered in the action. It also permits intervention in the discretion of the trial court. Here, the trial court permitted the groups and parents to intervene pursuant to section 26.1(2)(b) of the Civil Practice Act, which provides:

> "Upon timely application anyone may in the discretion of the court be permitted to intervene in an action *** (b) when an applicant's claim or defense and the main action have a question of law or fact in common." (Ill. Rev. Stat. 1975, ch. 110, par. 26.1(2)(b).)

Section 26.1 has been liberally construed (*Bredberg* v. *City of Wheaton* (1962), 24 Ill. 2d 612, 623; *Dowsett* v. *City of East Moline* (1956), 8 Ill. 2d 560, 567) and is modeled after Rule 24(b) of the Federal Rules of Civil Procedure, so that the interpretation of Rule 24 is highly relevant. See *Cooper* v. *Hinrichs* (1957), 10 Ill. 2d 269, 277; *Dowsett* v. *City of East Moline* (1956), 8 Ill. 2d 560, 567; Ill. Ann. Stat., ch. 110, par. 26.1, Historical and Practice Notes, at 318 (Smith-Hurd 1968).

Permissive intervention, by definition, lies in the sound discretion of the trial court, and its judgment will not be reversed unless a clear abuse of discretion is shown. Under the intervention statute, a direct interest in the suit need not be shown (*Mensik* v. *Smith* (1960), 18 Ill. 2d 572, 590), but the applicant must have an enforceable or recognizable right and more than a general interest in the subject matter. *Cooper* v. *Hinrichs* (1957), 10 Ill. 2d 269, 277.

The facts show that the trial court acted within its discretion in permitting intervention because the intervenors have a recognizable right to participate in the selection of principals in Chicago through the use of local nominating committees. At the time the trial court allowed intervention, the authorization for nominating committees was found only in action of the board of education. Such authorization is now found, however, in the School Code. Section 34—8.2 of the School Code permits the Chicago board of education to use local nominating committees to screen applicants for the job of principal in local schools. Several of the individual intervenors have been members of principal-nominating committees, and several members of organizational intervenors have participated in selecting principal-nominating committees. It has been held that an organization has standing to assert the concerns of its constituents. (*NAACP* v. *Alabama* (1958), 357 U.S. 449, 2 L. Ed. 2d 1488, 78 S. Ct. 1163.) Also, the individual intervenors and the members of the organizational intervenors are parents of children in the Chicago public schools. As parents, they have a special interest in the litigation. Section 34—8.2 requires at

least 60% of the members of local nominating committees to be "parents or guardians of children in the affected school." (Ill. Rev. Stat. 1979, ch. 122, par. 34—8.2(C).) Thus, the intervenors have a vital interest in the outcome of this litigation and in the method of selecting principals for their schools. Their right to participate as members of the nominating committees or to have local nominating committees participate in the process of selecting principals will be affected by this litigation. The intervenors have more than a "mere interest" in the general subject matter of the litigation. Their interests will be adversely affected if plaintiffs prevail. The trial court did not abuse its discretion in allowing the petition to intervene.

The issue raised by the merits of this appeal concerns the construction to be given the provision contained in section 34—84 of the School Code (Ill. Rev. Stat. 1977, ch. 122, par. 34—84) requiring that appointments be made "for merit only." The Chicago board of education and the intervenors challenge the appellate court's decision that merit appointment of principals requires that the board of education appoint principals according to their position of rank order on the eligibility list prepared by the board of examiners. They contend that the legislature granted the board of education the exclusive power to make appointments and promotions within its discretion. (See Ill. Rev. Stat. 1977, ch. 122, par. 34—8.) Requiring the board of education to make rank-order appointments pursuant to the board of examiner's eligibility list would, according to the board of education and the intervenors, constitute usurpation of the board of education's power to appoint.

In support of this argument, they maintain that the legislative scheme of the School Code evinces the legislative intent that the board of education have the authority to exercise broad discretion in its exclusive power to appoint principals. Specifically, they argue that the failure of the General Assembly to enact House Bill 1067 in the 79th General Assembly, the rejection of House Bill 516 in the 80th General Assembly, and

the enactment of section 34—8.2 reflect the legislature's affirmation of this permissibly broad power. The plaintiff-principals counter with the contention that section 34—8.2 neither repealed nor modified the rank-order requirement of section 34—84 and that the failure of the legislature to act favorably on a proposed bill can be of no consequence in legislative interpretation.

House Bill 1067 was introduced in the 79th General Assembly to amend section 34—84 of the School Code to define the term "for merit only" as requiring that principals or teachers be appointed in order of their standing on the eligibility list. The bill was tabled on June 25, 1975, in the House Elementary and Secondary Education Committee. The bill was reintroduced in the 80th session of the Illinois General Assembly as House Bill 516 and, on April 29, 1977, was again tabled in the Elementary and Secondary Education Committee. Prior to the rejection of House Bill 516, House Bill 1742 was approved as Public Act 80—879, effective October 1, 1977. (Ill. Rev. Stat. 1977, ch. 122, par. 34—8.2.) Under section 34—8.2, the board of education is legislatively authorized to impanel local nominating committees and have such committees consider, interview and nominate persons on the eligibility lists and principals who consent to be considered for a transfer. Section 34—8.2 provides:

> "A. Before the general superintendent shall recommend or the board shall vote on the appointment of a principal, the general superintendent and board may obtain the nomination of a person or persons to fill the position of principal by a local nominating committee.
>
> B. A local nominating committee, when authorized by board rules and regulations, may consider, interview and nominate only those persons for the position of principal who appear on the appropriate eligibility list prepared by the board of examiners or those principals who consent to be considered for a transfer. The recommendations of the local nominating committee shall not discriminate against any person based upon race, color, creed, national ancestry, sex, ethnic heritage or religious beliefs.

> C. The Board may adopt rules and regulations regarding the formation of and procedures to be followed by local nominating committees; these rules and regulations shall assure that at least 60% of the members of each committee shall be parents or guardians of children in the affected school." (Ill. Rev. Stat. 1977, ch. 122, par. 34—8.2.)

The relevant legislative activity is thus summarized as follows: (1) House Bill 1067 requiring rank-order appointment of principals was not adopted in the 79th General Assembly in 1975; (2) section 34—8.2 was enacted in 1977 and; (3) House Bill 516 requiring rank-order appointment was rejected in 1977. For the reasons enumerated herein, we agree that this legislative activity and the discussion of these bills in committee reflects the intent of the General Assembly that the board of education have the authority to exercise broad discretion in the appointment of principals and not be limited to rank-order appointment.

We note initially that the failure of a committee to act favorably on a proposed bill should not be relied upon, in the absence of an indication as to the reason for the failure, to ascertain legislative intent. (*Order of Railway Conductors of America v. Swan* (1947), 329 U.S. 520, 529, 91 L. Ed. 471, 478, 67 S. Ct. 405, 410.) Thus, the failure of the House Elementary and Secondary Education Committee to act favorably on House Bills 1067 and 516, in and of itself, can be of no aid in construing section 34—8.2. However, legislative committee hearings conducted on proposed bills are matters of public record. These hearings include statements by the proponents of the rejected bills as to their purpose as well as by opponents as to the reason for their opposition. The hearings also include statements by the proponents of House Bill 1742 (now section 34—8.2 of the School Code). In a previous opinion, we have recognized that public statements made by those who are in a

position to clarify legislative meaning carry weight and are helpful to this court. (*Client Follow-Up Co. v. Hynes* (1979), 75 Ill. 2d 208, 226; see 2A Sutherland, Statutes & Statutory Construction sec. 48.10, at 209-10 (4th ed. 1973).) We find that the statements made during the legislative committee hearing on these bills are helpful in our determination of legislative intent insofar as they reflect the conflict between the rejected bills and House Bill 1742 (section 34—8.2).

The timing of the introduction of these bills as they relate to this litigation is also worthy of consideration. The complaint in this case was filed on June 12, 1975. House Bill 1067, which would have defined "for merit only" as used in section 34—84 of the School Code as requiring that appointments be made in order of standing on the eligibility list, was introduced in the House of Representatives on March 26, 1975. The bill was tabled on June 25, 1975. The trial court entered its order holding that rank order on the eligibility list need not be the sole criteria in the appointment of principals on December 20, 1976. Thereafter House Bill 1742 (now section 34—8.2) was introduced, as was House Bill 516 (again defining "for merit only" as requiring appointments of principals to be made in order of rank on the eligibility list). House Bill 1742 was reported favorably out of committee. A few days later the same committee considered House Bill 516. It is plain from the comments made during the committee hearings that these bills were inspired by and were in response to this litigation and the December 20, 1976, order of the circuit court of Cook County in this case.

Ronald Cope, who represents plaintiffs in this case, testified before the Elementary and Secondary Education Committee in favor of House Bill 516. In opposition to the adoption of the bill, Representative Madison stated:

> "I would like to call to the committee's attention the fact that just last week we voted on House Bill 1742. And we voted that bill out of here on a vote of 17 to 3 and that bill in essence gave the Chicago School Board the authority to

> allow local nominating committees to get involved in principal selection. *** This particular bill if passed by the committee would completely contravene the *** effects upon 1742 because it defines for merit only as an order of standing and at the present time for merit takes into consideration several factors including the community's standing on the principal selection."

Dr. Arthur Lehne, assistant superintendent of the Chicago board of education, also testified in opposition to House Bill 516. He agreed with Representative Madison that House Bill 516 "would negate 1742." Representative Levin, who had been a sponsor of House Bill 1742, advocated the advisory role of the community in the selection of principals as provided in the newly adopted House Bill 1742:

> "[T]he ultimate decision under our bill is still with the Board of Education. We are just talking about an advisory role, so that the community could have some role (unintelligible) in those schools where parents and community are most involved you get the best quality education. So it would be very hard in those schools where there is hostility between the principal and the community to really have a good operation going on."

The above statements concerning House Bill 516 indicate that the provision of that bill defining "for merit only" as rank-order appointment was viewed as being in direct opposition to the newly enacted bill authorizing the board's creation of local nominating committees. An examination of the legislative floor debates preceding the enactment of House Bill 1742 supports this conclusion. According to Representative Levin, the underlying purpose of the bill was to clarify the power of the board of education to create community advisory committees. He stated:

> "[T]his Bill was introduced because there was litigation pending * * * in which the Circuit Court of Cook County * * * confused the issue as to whether or not the board had the authority to have these advisory council[s]. This is meant to clarify the legal authority." (House Debates on House Bill 1742, June 26, 1977, at 72.)

This discussion refers to the order entered by the circuit court in this case. Thus, according to Representative Levin, House Bill 1742 would affirm the power of the board of education to appoint local nominating committees to assist the board in the determination of meritorious candidates for principalships. Representative Gaines spoke of the value of community input in the selection of principals:

> "[The amendment] is very much needed to take away from the Board of Education their excuse for not listening to community participation. This is the only district where the board members are not elected. And the only opportunity that the community has to have their expressions of interest heard is through these groups. *** Only when you have this kind of community participation, can you have good quality education." House Debates on House Bill 1742, June 26, 1977, at 76.

We conclude that the legislative history of House Bill 1742 of the 80th General Assembly (section 34-8.2), House Bill 1067 of the 79th General Assembly, and House Bill 516 of the 80th General Assembly, as well as the clear language of House Bill 1742, clearly indicate that the legislature intended that the board of education not be bound by the candidates' standing on the board of examiners' eligibility list in appointing persons to serve as principals.

The legislature would not have granted the board of education the authority to create local nominating committees if those groups were to have no input in the appointment process. If the board were to be confined to the eligibility list, any recommendation by the local committee would be without weight. Thus the statute authorizing the creation of the community committees would be meaningless. This court will not assume that the legislature engaged in a meaningless act. (*Lopez* v. *Fitzgerald* (1979), 76 Ill. 2d 107, 117; *Pinkstaff* v. *Pennsylvania R.R. Co.* (1964), 31 Ill. 2d 518, 524.) Thus, the presumption is that "the lawmaker has a definite purpose in

every enactment and has adapted and formulated the subsidiary provisions in harmony with that purpose ***." (2A Sutherland, Statutes and Statutory Construction sec. 46.05, at 57 (4th ed. 1973).) The existence of community input is clearly inconsistent with an interpretation of a rank-order-of-appointment requirement. The sections of the School Code are *in pari materia,* and they must be construed with reference to one another in order to give harmonious meaning to the act as a whole. (See, *e.g., Galvin* v. *Galvin* (1978), 72 Ill. 2d 113, 118.) We therefore do not construe the requirement of section 34-84 that principals be appointed "for merit only" to mean that the board of education make such appointments pursuant to the order of rank appearing on the eligibility list prepared by the board of examiners. Instead, in conjunction with section 34-8.2, we construe the merit requirement as permitting the board of education discretion in its duty to appoint, which discretion may include the creation of community groups to participate in the appointment procedure. Under section 34-8.2, the local nominating committees may nominate for the consideration of the board of education any person whose name appears on the board of examiners' eligibility list.

The appellate court used the rule of contemporaneous construction in its analysis of the term "for merit only." We do not find that rule of construction to be applicable here. We have determined herein that the definition of that term pursuant to section 34—8.2 does not include a requirement that the board of education appoint principals by rank order. We need not ascertain, however, the meaning of that term prior to the adoption of section 34—8.2. Although the statute did not become effective until September 1, 1977, we hold, for reasons stated below, that provision and our interpretation thereof to be controlling in this case.

In absence of express language declaring otherwise, an amendatory act is ordinarily construed as being prospective in its operation. (*Wilson-Raymond Constructors Co.* v. *Industrial*

Com. (1980), 79 Ill. 2d 45, 54-55; *General Motors Corp.* v. *Industrial Com.* (1975), 62 Ill. 2d 106, 111; *People ex rel. American Federation of State Employees* v. *Walker* (1975), 61 Ill. 2d 112, 118; *People ex rel. Baylor* v. *Bell Mutual Casualty Co.* (1973), 54 Ill. 2d 433, 440; *New York Life Insurance Co.* v. *Murphy* (1944), 388 Ill. 316, 324.) This general rule is based upon the principle that the legislature may not impair the obligation of contracts (*A.S.S. Wrecking Co.* v. *Guaranty Bank & Trust Co.* (1972), 53 Ill. 2d 249, 253-54) or interfere with vested substantive rights. (*Hogan* v. *Bleeker* (1963), 29 Ill. 2d 181.) However, in the absence of a saving clause, an amendatory act may be retroactively applied where the legislature so intended and where the statute affects the remedy or matters of procedure. When a change of law merely affects the remedy or law of procedure, all rights of action will be enforceable under the new procedure, without regard to whether they accrued before or after such change of law and without regard to whether or not the action has been instituted, unless there is a saving clause as to existing litigation. (34 Ill. L. & Prac. *Statutes* secs. 194, 195, at 156-57 (1958).) (See also *Orlicki* v. *McCarthy* (1954), 4 Ill. 2d 342; *Dworak* v. *Tempel* (1959), 17 Ill. 2d 181, 187; *Steinberg* v. *Chicago Medical School* (1977), 69 Ill. 2d 320, 337; *Grigsby* v. *Industrial Com.* (1979), 76 Ill. 2d 528, 532.) (See generally 1A Sutherland, Statutes and Statutory Construction sec. 22.36, at 200 (4th ed. 1972); 82 C.J.S. *Statutes* sec. 432, at 1006-07 (1953).) Changes in procedure or existing remedies will not be applied retrospectively, however, where a vested, constitutionally protected right will be deprived by such application. *Hogan* v. *Bleeker* (1963), 29 Ill. 2d 181, 187.

With the above principles in mind, we find the 1977 amendment to the School Code to be controlling in this case and, therefore, applicable to the pending applications for the principal positions. There exists no vested right in any particular mode of procedure. (*Winter v. Barrett* (1933), 352 Ill. 441, 466: see 73 Am. Jr. 2d *Statutes* sec. 388, at 507 (1974); 16A

Am. Jur. 2d *Constitutional Law* sec. 675, at 661 (1979).) Furthermore, we do not deem there to be a property right inherent in holding a public office; that is, the persons whose names appear on the eligibility list have no vested right in a principalship. Although we are not bound by the Federal courts' decisions, we are in agreement with the Seventh Circuit's conclusion that a candidate possessing a valid certificate from the board of examiners does not have an entitlement to a principalship. (*Webster v. Redmond* (7th Cir. 1979), 599 F.2d 793.) The amendment may, therefore, be retroactively applied.

Finally, the plaintiffs assert that the term "for merit only" has, at all times, required rank-order appointment and that section 34—8.2 neither amended nor modified the School Code's rank-order requirement. As stated above, section 34—8.2 concerns the procedural aspect of a nonvested right and is therefore to be retrospective in its application. Thus, we need not decide whether the law prior to the addition of section 34—8.2 mandated appointment by rank order on the eligibility list. However, even if the prior law did require appointment of principals by rank order, we would find section 34—8.2 to have amended, by implication, this requirement.

An implied amendment is an act which purports to be independent of, but which in substance actually modifies or adds to a prior act. (1A Sutherland, Statutes and Statutory Construction sec. 22.13, at 139 (4th ed. 1972).) The implied amendment arises out of the inconsistency or repugnancy between the two acts. (*People ex rel. Coffman v. Illinois Central R.R. Co.* (1924), 314 Ill. 339, 342.) This court has stated on more than one occasion that although implied amendments are not favored, they are not constitutionally prohibited. (*People ex rel. Nordstrom v. Chicago & North Western Ry. Co.* (1959), 16 Ill. 2d 264, 268; *Jordan v. Metropolitan Sanitary District* (1958), 15 Ill. 2d 369, 378; *Starck v. Chicago & North Western Ry. Co.* (1955), 4 Ill. 2d 611, 617.) We have previously identified the inconsistency

between a rank-order appointment requirement and a procedure utilizing community input through local nominating committees. Thus, if rank-order appointment was indeed mandated prior to October 1, 1977, such a procedure would be amended by implication by the enactment of section 34—8.2.

In conclusion, we hold that the requirement under the School Code that principals be appointed "for merit only" does not mandate that the board of education appoint persons to serve as principals solely according to the rank order of appearance on the eligibility list prepared by the board of examiners. The legislative scheme evinces an intent that the board of education have great discretion in such appointments. This intent is aptly reflected in section 34—8.2, which is to be retroactively applied.

The judgment of the appellate court is reversed, and the judgment of the circuit court is affirmed, except insofar as it required appointments in rank order "until a uniform system of community input is established."

Appellate court reversed; circuit court affirmed in part and reversed in part.

Office-Supreme Court, U.S.
FILED
MAR 9 1981
ALEXANDER L. STEVAS,
CLERK

No. 80-1462

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

IRIS M. MAITER, ET AL.,

Petitioners,

vs.

CHICAGO BOARD OF EDUCATION, ET AL., and DISTRICT #21 PARENT EDUCATION COUNCIL, ET AL.,

Respondents.

SUPPLEMENTAL APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

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Filed: 10/10/79

77-423

IRIS M. MAITER, et al.,
Plaintiffs-Appellees,
Separate-Appellants
and Cross-Appellants,

v.

CHICAGO BOARD OF EDUCATION, et al.,
Defendants-Appellees,
Separate-Appellees and
Cross-Appellees,

v.

DISTRICT #21 PARENT EDUCATION COUNCIL, et al.,
Intervenors-Appellants,
Separate-Appellees and
Cross-Appellees,

v.

MIDWEST COMMUNITY COUNCIL, et al.,
Intervenors-Appellees,
Separate-Appellees and
Cross-Appellees.

Appeal from the Circuit Court of Cook County.

Honorable
Arthur L. Dunne
Judge Presiding.

MISS JUSTICE McGILLICUDDY DELIVERED THE OPINION OF THE COURT:

This is an appeal from an order entered in the Circuit Court of Cook County which clarified the procedures to be used by the Board of Education in the appointment of principals in the Chicago Public School system.

The plaintiffs, principals in the school system and individuals on the 1970 and 1974 eligibility lists for principal, filed a complaint for declaratory judgment on June 12, 1975. The

complaint alleged that the rules and procedures employed by the Board of Education under which it may obtain the nomination of a person for principal by a local nominating committee were in violation of the School Code.

The School Code provides that appointments and promotions of teachers, principals and other educational employees in cities of over 500,000 inhabitants shall be made for merit only. (Ill. Rev. Stat., 1977, ch. 122, par. 34-84.) Subsequent to the enactment of this provision in 1917 (the Otis Law) the Board of Education appointed persons to the position of principal from the principals' eligibility list in rank order. Rank order was determined by the score achieved on an examination administered by the board of examiners. (Ill. Rev. Stat., 1977, ch. 122, par. 34-83.) This method of appointment continued to 1970.

On March 25, 1970, the Board of Education adopted procedures establishing "nominating committees of local school councils" in order to involve local communities in the selection of school principals. Pursuant to these procedures, if there were five vacancies for principals, the names of the first five candidates in rank order on the eligibility list were presented to the nominating committees for consideration. The committees rated the candidates in order of preference, and the board attempted to honor the requests. On October 14, 1970, the board determined that rank on the eligibility list should not be considered either in presenting candidates to the nominating committees or in the assignment of principals.

The relief sought by the plaintiffs was a declaration that the rules and procedures establishing nominating committees of local school councils were in violation of the School Code, the Fourteenth Amendment to the United States Constitution, and section 2 of article I of the Illinois Constitution. In addition, the plaintiffs asked the court to enter an order directing the board to make all appointments to the position of principal in rank order from the eligibility lists prepared by the board of examiners.

On September 28, 1976, the trial court entered an order granting leave to members of various community organizations and school parents councils to intervene in this suit. In their answer to the complaint, the intervenors adopted the responses that the board set forth in its answer.

The plaintiffs filed a motion for summary judgment, and the defendants and intervenors responded with their answers and objections. Subsequent to several hearings on the motion, the trial court entered its judgment order on December 20, 1976. In its order the trial court found that the Otis Law was passed in 1917 in order to do away with favoritism, partisanship and cronyism in the selection of principals. It also found that rank order appointment of principals was abhorrent because it precluded community input and that the procedures establishing community nominating committees set forth no ascertainable standards to be employed in the selection of nominees by the committees. The trial court ordered:

> "1. That appointment of a person to the position of principal is to be made on the basis of merit, as required by Ill. Rev. Stat., Ch. 122, § 34-84.
>
> "2. That rank order on the principals' eligibility examination need not be used by the Board as the sole criteria of merit in the appointment of principals to individual schools, provided however, that until a uniform system of community input is established appointments to principals shall be in rank order commencing with appointments in rank order from the oldest existing principal list (1970)."

The intervenors appealed from that portion of the order which required the board to appoint principals in rank order until such time as the board established a uniform system of community input. Subsequently, the intervenors filed a motion to dismiss their appeal because of mootness, and we granted the motion.

The plaintiffs appealed from the portion of the order which provided that rank order on the examination need not be the sole criteria of merit in the appointment of principals to

individual schools. In addition, the plaintiffs appealed from the order of September 28, 1976, permitting the members of community organizations and school parents councils to intervene in this action.

Effective October 1, 1977, section 34-8.2 was added to the School Code for cities of over 500,000 inhabitants. This provision validates the use of nominating committees in the selection of principals. The section provides as follows:

> "A. Before the general superintendent shall recommend or the board shall vote on the appointment of a principal, the general superintendent and board may obtain the nomination of a person or persons to fill the position of principal by a local nominating committee.
>
> "B. A local nominating committee, when authorized by board rules and regulations, may consider, interview and nominate only those persons for the position of principal who appear on the appropriate eligibility list prepared by the board of examiners or those principals who consent to be considered for a transfer. The recommendations of the local nominating committee shall not discriminate against any person based upon race, color, creed, national ancestry, sex, ethnic heritage or religious beliefs.
>
> "C. The board may adopt rules and regulations regarding the formation of and procedures to be followed by local nominating committees; these rules and regulations shall assure that at least 60% of the members of each committee shall be parents or guardians of children in the affected school." Ill. Rev. Stat., 1977, ch. 122, par. 34-8.2.

Section 34-84 of the code requiring appointment for merit only remains unchanged.

In consideration of the amendment to the School Code authorizing the use of nominating committees, the following issues are presented for review:

1. Whether appointment "for merit only" requires rank order appointments from the eligibility lists prepared by the board of examiners.

2. Whether the passage of section 34-8.2 repealed the requirement of rank order appointment, thereby rendering moot all issues raised in this case.

3. Whether the trial court erred in permitting members of community organizations and school parents councils to intervene in this suit.

I

In 1915 the Board of Education adopted a rule which prohibited membership in or affiliation with labor unions by teachers. The Illinois Supreme Court upheld this regulation ruling that the Board of Education had the absolute right to employ, to decline to employ or to re-employ any applicant for any reason whatever or for no reason at all. *People ex rel. Fursman* v. *City of Chicago* (1917), 278 Ill. 318.

Subsequently, the Illinois legislature enacted the Otis Law which provided in part that the board must appoint teachers and principals for merit only. Ill. Rev. Stat., 1977, ch. 122, par. 34-84.

Nowhere in the School Code has "for merit only" been defined. In its answer the board concedes that from the time of the enactment of the Otis Law in 1917 to 1970, appointments to the position of principal were made in rank order from the principals' eligibility list. The plaintiffs argue that by applying the doctrine of contemporaneous construction in interpreting the statute, "for merit only" requires appointment in rank order.

Because the statute does not define "for merit only" and because there exists no legislative history to assist us in the interpretation of this provision, we must examine the principles of statutory construction. We agree with the plaintiffs that the doctrine of contemporaneous construction is a reliable principle to apply in construing the meaning of "for merit only."

Pursuant to the doctrine of contemporaneous construction, the meaning of a doubtful statute can be determined by examining the continuous interpretation of that statute by the executive officers charged with its administration and enforcement, the courts and the public. (Sutherland, Statutory Construction § 49.03 at 233 (1973).) The conclusiveness of the interpretation depends on whether the interpretation originated from a reliable source, the interpretation was made at or near the time of the enactment of the statute, and the interpretation has continued for a long period of time and received acceptance and following. (Sutherland, § 49.04 at 235-36.) In addition, when a statute that has received a contemporaneous interpretation is re-enacted, this construction is presumed to be the correct interpretation of the law. Sutherland, § 49.09 at 256.

The statute in the instant case directs the board to appoint principals for merit only. From 1917 to 1970 the board interpreted this provision as requiring rank order appointment. Certainly this interpretation originated from a reliable source, was made immediately following the enactment of the statute, and continued for approximately 53 years. In addition, the legislature re-enacted this provision in 1945 and 1961 while this interpretation was attached to it. We conclude, therefore, that section 34-84 of the School Code requires appointment to the position of principal in rank order from the principals' eligibility list.

We are aware of the recent decision of the United States Court of Appeals for the Seventh Circuit which reaches a contrary conclusion concerning the meaning of "for merit only." In *Webster* v. *Redmond* (filed 5/22/79), ____ F. 2d ____, the Chicago Board of Education refused to appoint the plaintiff to a position as principal despite his possession of a principal's certificate. The plaintiff filed suit in the Federal Court alleging, among other charges, that the board had deprived him of his property in violation of the due process clause of the Fourteenth Amendment. The District Court

agreed and entered judgment in the plaintiff's favor. *Webster* v. *Redmond* (1977), 443 F. Supp. 670.

The Court of Appeals reversed the District Court and found that the plaintiff possessed no protectible property right in an appointment as a principal. In reaching this conclusion, the court found it necessary to consider whether Illinois law required the board to appoint a candidate as principal when his name reached the top of the eligibility list. The court concluded:

> "In order to resolve the questions before us we need not definitely decide what the phrase "for merit only" means in the Illinois law. It is sufficient if we can state with certainty that, whatever its meaning, it does not create an entitlement to a principalship under Illinois law, and that we can do."

Although we respect the opinion of the Court of Appeals, we note that the decision makes no reference to the doctrine of contemporaneous construction, the doctrine upon which we rely in resolving this issue. For this reason, we decline to concur with the Court of Appeal's holding in *Webster*. The general rule is that decisions of United States District and Circuit Courts are not binding upon Illinois courts. *City of Chicago v. Groffman* (1977), 68 Ill.2d 112, 368 N.E.2d 89; *People ex rel Illinois Federation of Teachers v. Lindberg* (1975), 60 Ill.2d 266, 326 N.E.2d 749, *cert. denied* 423 U.S. 839.

II

The board argues that the enactment of section 34-8.2 of the School Code which authorizes the use of nominating committees in the selection of principals evidences the intent of the legislature that "for merit only" does not mean rank order appointments. The board supports this contention by pointing out that a bill introduced in the General Assembly defining "for merit only" as "an order of standing on eligible lists," was rejected by the House Elementary and Secondary Education

Committee. We believe, however that the failure of a committee of the legislature to act favorably on a proposed bill does not have the same probative value as a rejection by the entire legislative body. See *Order of Railway Conductors* v. *Swan* (1947), 329 U.S. 520, 91 L.Ed. 471, 67 S.Ct. 405.

As we previously noted, when the legislature enacted section 34-8.2 it did not repeal section 34-84, which required appointment for merit only. Generally, repeals or amendments by implication are not favored and will not be upheld unless the terms of the subsequent act are so inconsistent with the provisions of the prior law that they cannot stand together. (*County of DuPage* v. *Harris* (1967), 89 Ill.App.2d 101, 231 N.E.2d 195; *Village of Monsanto* v. *Touchette* (1965), 63 Ill.App.2d 390, 211 N.E.2d 471; Sutherland, § 22.13 at 139-40.) We do not believe that these two provisions are so inconsistent that they cannot co-exist in the School Code. Therefore, the passage of section 34-8.2 of the School Code did not repeal or amend the requirement of rank order appointment as contained in section 34-84 of the School Code and has not rendered moot the issues raised in this case.

The board itself, from March to October 1970, employed procedures which resulted in the appointment of principals in rank order and the consideration of the recommendations of local nominating committees. The procedures were explained in board report 70-926-2, which stated as follows:

> "On March 25, 1970, the Board of Education adopted procedures to involve local communities more in the selection of the principal for their school. In general, this selection process has worked well where there is a list of *transfer* applicants for the principalship vacancy under consideration. However, in making assignments from the eligible list, the present practice requires that the number of principal candidates on the eligible list, in order of rank on that list, equal to the number of principalship vacancies being considered be rotated among each school's selection committee for consideration. For example, if there are five schools in need of principals, the next five principal

> candidates from the eligible list, in order of rank, are presented to these schools for interviews. In practice, the candidate's attractiveness to a committee has not in all instances been in accordance with his rank on the eligibility list."

Because the Chicago Public School system encompasses hundreds of schools, principalship vacancies will occur simultaneously. During 1971, 52 principal appointments were made from the 1970 eligibility list. Of these appointments, 11 were made in March, 6 in April, 8 in May, and 17 in September. If the board must make ten appointments from the eligibility list in a certain month, the local nominating committees can interview the next ten persons on the list and relay their preferences to the board. In this manner, not only is the board complying with the statutory requirement of rank order appointment, but it can also consider the particular needs of the individual school in making an appointment.

A significant portion of the intervenors' brief sets forth the advantages of individual consideration of all persons on the eligibility list as opposed to rank order appointments. The intervenors argue that because of the diversity which exists in the schools of Chicago, it is important to consider the particular needs of the individual schools and communities and the qualifications of all eligible persons in order to select the most qualified applicant to serve as principal.

In 1917 the legislature determined that rank order appointment in the Chicago Public School system was an appropriate solution to the problems which existed at that time. If those problems no longer exist or if the solution is unsatisfactory today, it is the responsibility of the legislature to repeal that section of the statute.

For the foregoing reasons, that portion of the judgment order of the Circuit Court of Cook County providing that rank order need not be used by the board as the sole criteria of merit is reversed. The cause is remanded with directions to enter an

order that the Board of Education of the City of Chicago make appointments to the position of principal in rank order from eligibility lists prepared by the board of examiners, first exhausting the prior 1970 eligibility list before proceeding with any subsequent list.

In view of the above holding it is not necessary for us to consider the plaintiffs' assertion that the trial court erred in permitting members of community organizations and school parents councils to intervene in this suit.

Reversed and remanded
with directions.

Simon, PJ., and McNamara, J., concur.

ILLINOIS SUPREME COURT
CLELL L. WOODS, CLERK
SUPREME COURT BUILDING
SPRINGFIELD, ILL. 62706
(217) 782-2035

November 26, 1980

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Nos. 52787—Iris M. Maiter, et al., appellees, vs. Chicago
52788 Board of Education, et al., etc., appellees (Dis-
Cons. trict #21 Parent Education Council, et al., appellants). Appeal, Appellate Court, First District.

The Supreme Court today denied the petition for rehearing in the above entitled cause.

Very truly yours,

C. L. Woods

[Signed] Clell Woods
Clerk of the Supreme Court

No. 80-1462

Office-Supreme Court,
FILED
MAR 31 1981
ALEXANDER L. STEVAS
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

IRIS M. MAITER, et al.,

Petitioners,

v.

CHICAGO BOARD OF EDUCATION, et al., and DISTRICT #21 PARENT EDUCATION COUNCIL, et al.,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

BRIEF FOR RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED.

Does the requirement of Section 34-84 of The Illinois School Code (Illinois Revised Statutes, 1977, ch. 122, par. 34-84) that appointments and promotions of principals shall be made "for merit only" mandate that the Board of Education of the City of Chicago make appointments of persons in "rank order," as determined by the score assigned prospective principal candidates by the Board of Examiners?

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ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

BRIEF FOR RESPONDENTS IN OPPOSITION

To: The Honorable Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States.

Respondents respectfully submit that the judgment and opinion in this cause of the Supreme Court of the State of Illinois correctly stated the law as enunciated in prior decisions of that court and other Illinois courts. The judgment and opinion do not raise a federal question.

STATEMENT OF FACTS.

Petitioners' Statement of Facts is inaccurate and replete with argument. Respondents therefore deem it necessary to set forth this additional statement of facts.

Petitioners filed a complaint in the Circuit Court of Cook County, Illinois on June 12, 1975 seeking a declaratory judgment that the rules and procedures adopted by the Chicago Board of Education which established local school nominating committees to participate in the principal selection process were in violation of The School Code, the Fourteenth Amendment of the United States Constitution, and Section 2 of Article I of the Illinois Constitution. Petitioners contended that Section 34-84 of The School Code (Illinois Revised Statutes, 1977, ch. 122, par. 34-84), which provides that principals are to be appointed and promoted "for merit only," requires that appointments be made in "rank order" as determined by the score assigned prospective principal candidates by the Board of Examiners. On December 20, 1976, pursuant to petitioners' motion for summary judgment, the trial court entered its judgment order. The court found that rank-order appointment of principals was abhorrent because it precluded community input; however, the trial court ordered that all principals be selected by "rank order" until such time as the Board of Education adopted "a uniform system of community input." Following entry of the trial court's order, the Board of Education, on April 13, 1977, adopted uniform procedures and guidelines governing the participation of principal nominating committees.

Petitioners inaccurately state as fact that not all persons who apply for a principalship are interviewed, that each nominating committee has a different way in which it decides whom to nominate, and that there are no particular criteria for how votes are to be taken. The uniform guidelines and procedures adopted by the Board of Education pursuant to the trial court's order, *inter alia,* clarified the role of local nomi-

nating committees and changed and unified the procedures governing the interview and evaluation process. Petitioners inaccurately represent to this Court that local school nominating committees have continued to function under the rules and procedures in effect at the time this lawsuit was originally commenced almost six years ago. Similarly, belatedly and without support in the record, petitioners imply that local school nominating committees practiced or practice racial discrimination.

REASONS FOR DENYING THE WRIT.

I.

PETITIONERS' POSSESSION OF A PRINCIPAL'S CERTIFICATE DOES NOT CREATE A PROPERTY INTEREST.

This case fails to raise a federal question. The Illinois Supreme Court held herein (82 Ill. 2d 373 [1980]) that the requirement of Section 34-84 of The School Code that principals be appointed "for merit only" does not mandate that the Board of Education appoint persons to serve as principals solely according to the rank order of appearance on the eligibility list prepared by the Board of Examiners. Construing the relevant sections of The School Code *in pari materia* (Sections 34-8, 34-8.2, 34-18, 34-83 and 34-84), the Illinois Supreme Court found that the legislative scheme and the merit requirement of Section 34-84 of The School Code evince an intent that the Board of Education have great discretion in its statutory duty to appoint. The Court specifically stated that it need not decide whether or not the law, prior to the addition of Section 34-8.2, mandated rank order appointments. Notwithstanding that fact, petitioners continue to presume and tenaciously assert that such a rank order requirement had earlier existed. Having assumed the existence of a rank order requirement, petitioners next argue that "abolishment" of the alleged rank order requirement denied petitioners of a property interest without due process of law.

While the Fourteenth Amendment forbids the state to deprive a person of interests in life, liberty or property without due process of law, the protected interests are "not created" by that amendment but rather, "they are created and their dimensions are defined" by an independent source, such as state substantive statutes or rules or a substantive guarantee of another part of the U. S. Constitution. *Board of Regents* v. *Roth,* 408 U. S. 564, 577, 92 S. Ct. 2701 (1972). Due process rights support and protect categories of substantive rights emanating not from the due process clause but from other sources. This is the teaching of *Board of Regents* v. *Roth.* Where no substantive right to a benefit exists, due process is not implicated. The issue in this case is a substantive one, namely, whether possession of a principal's certificate and placement on an eligibility list create an absolute right of appointment to a position. The case of petitioners failed on the merits of that substantive issue; the complete failure of the purported substantive case destroys as well any claim of denial of due process of law.

A person who has passed the tests administered by the Board of Examiners and who possesses a principal's certificate and is on a principals' eligibility list, is eligible to be considered for appointment to a position as principal. It is within the sound discretion of the Board of Education whom to appoint to a given principalship vacancy. Possession of a principal's certificate and placement on an eligibility list merely make a person eligible for appointment as a Chicago School principal, but does not constitute a recognizable property interest under State law, and a person has no entitlement to such position prior to appointment. A property right in public employment only attaches after the applicant secures the position sought. "A property interest in employment can, of course, be created by ordinance, or by an implied contract. In either case, however, the sufficiency of the claim of entitlement must be decided by reference to State law." *Bishop* v. *Wood,* 426 U. S. 341, 344; 96 S. Ct. 2074 (1976). See also, *Board of Regents* v.

Roth, 408 U. S. 564, 92 S. Ct. 2074 (1972); *Perry* v. *Sindermann,* 408 U. S. 593, 92 S. Ct. 2694 (1972). Illinois law does not recognize hopes and expectations of a promotion to a higher position as a property interest, nor does it recognize entitlement to a principalship (or to any other employment within the school system) prior to actual appointment. The discretionary power to appoint and promote teachers and principals rests solely with the Board of Education.

The Illinois School Code does not confer an absolute right to a position by virtue of possession of a principal's certificate, nor is appointment automatic upon the granting of a certificate. It has been specifically held that a school principal has no property interest in his position. *Danno* v. *Peterson,* 421 F. Supp. 950 (N. D. Ill. 1976). See also *Webster* v. *Redmond,* 599 F. 2d 793 (7th Cir., 1979) 444 U. S. 1039, 100 S. Ct. 712, *cert. den.* (1980). In *Webster,* the plaintiff possessed a valid principal's certificate and was even nominated by a local nominating committee to be principal of a school which had a principalship vacancy; however, the Board of Education declined to appoint Webster to a principalship. Webster alleged deprivation of his property interest in his certificate and he also alleged an automatic entitlement to a principalship by virtue of possession of a valid principal's certificate. The Court of Appeals for the Seventh Circuit had occasion to review the Illinois statutory scheme and concluded at page 14:

> "In order to resolve the questions before us we need not definitively decide what the phrase 'for merit only' means in the Illinois law. It is sufficient if we can state with certainty that, whatever its meaning, it does not create an entitlement to a principalship under Illinois law, and that we can do. There is no indication that the Board of Education is merely a formalistic 'rubber stamp' in the promotion process, which Webster's argument would require. Rather, there is every indication that, whatever the order it must consider them in the Board of Education as a separate entity is to have the final word and power of promotion or denial over those candidates who have been

certified to it by the Board of Examiners. The statute states that promotions shall be made by the Board, and by no other. That they are only to be made for merit and not for patronage reasons surely does not prevent the Board from exercising its judgment against the merits of a given applicant. There is thus no indication in Illinois law that possession of a certificate from the Board of Examiners means anything more than that one is to be placed on the eligibility list and considered at the appropriate time by the Board of Education. Claims of entitlement to promotion sufficient to evoke constitutional protection must be based on a surer footing.' *Webster* v. *Redmond,* 599 F. 2d 793 (7th Cir., 1979)."

CONCLUSION

On the basis of the above and foregoing reasons and authorities, it is respectfully requested that this Honorable Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

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NO. 80-1462

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1980

IRIS M. MAITER, et al.,

Petitioners,

v.

CHICAGO BOARD OF EDUCATION, et al., and DISTRICT #21 PARENT EDUCATION COUNCIL, et al.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

BRIEF OF RESPONSENT RAQUEL GUERRERO

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NO. 80-1462

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1980

IRIS M. MAITER, et al.,

Petitioners,

v.

CHICAGO BOARD OF EDUCATION,
et al., and DISTRICT #21
PARENT EDUCATION COUNCIL, et al.,

Respondents.

BRIEF OF RESPONDENT RAQUEL GUERRERO IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

STATEMENT OF THE CASE

This case involves the rights and powers of the Board of Education of the City of Chicago (hereafter "Board") and statutorily authorized local nominating committees in the nomination and initial appointment of persons to a principalship in the Chicago Public School system. Prior to 1970, the Board made the intitial appointment of persons to the position of principal solely on the basis of the score achieved on the eligibility examination, i.e., in rank order. In October of 1970, the Board adopted procedures which permit local school nominating committees to interview applicants for specific principalships and to recommend to the Board those individuals whom they believe to be best suited for appointment. R. C-211. After the recommendations are received from the local nominating committee, the Board appoints the person it deems most qualified. R. C-60. Appointments subsequent to October, 1970, pursuant to this procedure, have not been made in rank order. Five years

and 180 appointments after the Board changed its procedure (R. C-229-35), this action was filed by Petitioners seeking a declaratory judgment that Illinois statutes (1) mandated initial appointments to be made in rank order from eligibility lists and (2) prohibited the Board from obtaining the advice and recommendations of a local nominating committee.

State law requires that before a person may be appointed to a principalship, he or she must have passed an eligibility examination. Ill.Rev.Stat., ch. 122, §34-83. [1/] When a specific principalship position becomes open, Illinois law authorizes the formation of a local nominating committee, consisting of at least 60 per cent parents or guardians of children in the affected school, to "consider, interview and nominate" a person or persons to fill the position. Section 34-8.2. [2/] The committees' nomination is then sent to the General Superintendent. The specific appointment must be made "for merit only" (§34-84), and "only upon the recommendation of the General Superintendent of Schools or by a majority vote of the full membership of the Board...." Section 34-8

The trial court held that rank order appointments are not required and the Board may obtain the recommendations of local nominating committees. [3/] The Petitioners appealed. The Illinois

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1/ All future citations to the Chicago Board of Education Act of the Illinois School Code, Ill.Rev.Stat., ch. 122, §34-1, et seq., shall be to section number only, i.e., §34-83.

2/ Section 34-8.2 was adopted October 1, 1977, subsequent to the decision of the trial court but prior to the decisions of the Illinois Appellate and Supreme Courts. As noted by the Illinois Supreme Court, §34-8.2 was introduced and adopted in response to this litigation. Pet. for Cert., pp. 10a-11a.

3/ The trial court also invalidated the then existing Board regulations governing the procedures and operation of local nominating committees and required rank order appointments until "a uniform system" for local nominating committees was established. The Board adopted new regulations on April 13, 1977. See, App. A. No questions have been raised concerning the procedures under these uniform regulations. The Illinois Supreme Court reversed the judgment of the Circuit Court "insofar as it required appointments in rank order 'until a uniform system of community input is established'." Pet for Cert., p. 15a.

Supreme Court ultimately held:

> that the requirement under the School Code that principals be appointed "for merit only" does not mandate that the board of education appoint persons to serve as principals solely according to the rank order of appearance on the eligibility list prepared by the board of examiners. The legislative scheme evinces an intent that the Board of education have great discretion in such appointments. (Pet. for Cert., p. 15a.) 4/

REASONS FOR DENYING THE WRIT

I

THIS COURT LACKS JURISDICTION TO REVIEW THE JUDGMENT OF THE SUPREME COURT OF ILLINOIS

A. The Judgment Below Rests On Adequate State Grounds.

The issues presented to the Illinois Supreme Court pertained solely to the construction of Illinois statutes. The Illinois Supreme Court based its decision entirely on Illinois law. Pet. for Cert., pp. 1a-15a. The judgment thus rests on adequate state grounds and this Court does not have jurisdiction to review it. Board of Supervisors v. Allman, 423 U.S. 940 (1975); Wilson v. Loew's, Inc., 355 U.S. 597 (1958).

B. The Alleged Federal Questions Were Not Properly Presented Or Preserved In The State Court.

The alleged federal questions which Petitioners seek to have this Court review are (1) whether "the lower court's failure to remand this case to the trial court for resolution of [Petitioners' claim of alleged racial discrimination] has denied the Petitioners their right to equal protection and due process of law", (Pet. for Cert., p. 10), and (2) whether the ruling of the Illinois Supreme Court "denied Petitioners of a property interest without due process of law." Pet. for Cert., p. 13.

1. The first time the Petitioners raised the issue of remand for a hearing concerning alleged racial discrimination was in its Petition for Rehearing before the Illinois Supreme Court. Pet. for Cert., p. 11.

4/ As a result of the enactment of §34-8.2, in the Illinois Supreme Court the Petitioners abandoned their argument that local nominating committees could not be convened and instead argued that the committees were required to base their nominations on rank order.

The trial court's judgment order was entered in open court after lengthy argument by counsel concerning the draft order and specifically found "that no genuine issue of fact exists to be litigated by the parties in this cause." R. C-700. The Petitioners filed a Notice of Appeal to the Appellate Court of Illinois from the adverse judgment. Illinois Supreme Court 303, (Ill.Rev.Stat., ch. 110A, §303(c)(2)), requires that the Notice of Appeal "shall specify...the relief sought from the reviewing court." Petitioners' Notice of Appeal did not request a remand to the trial court for a hearing on any alleged factual issues. See, App. B. Petitioners' briefs in both the Illinois Appellate and Supreme Courts did not request a remand for the determination of any allegedly unresolved factual issues. Illinois Supreme Court Rule 341(e)(7) (Ill.Rev.Stat., ch. 110A, §341(e)(7)) provides "Points not argued are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing."

This Court does not have jurisdiction to review an alleged federal question that was neither raised nor decided in the state courts. Cardinale v. Louisiana, 394 U.S. 437 (1969). This factor is especially significant when the court below has failed to expressly pass upon the federal question. Under those circumstances, the Petitioners have the burden of showing that they properly raised the question because when "the highest state court has failed to pass upon a federal question, it will be assumed that the omission was due to want of proper presentation in the state courts, unless the aggrieved party in this Court can affirmatively show the contrary." Street v. New York, 394, U.S. 576, 582 (1969).

2. Rule 21.1(h) of this Court provides:

> If review of the judgment of a state court is sought, the statement of the case shall also specify the stage in the proceedings, both in the court of first instance and in the appellate court, at which the federal questions sought to be reviewed were raised; the method or manner of raising them and the way in which they were passed upon by the court; such pertinent quotation of specific portions of the record, or summary thereof, with specific reference to the places in the record where the matters appears (e.g., ruling on exception thereto, assignment of errors) as will

show that the federal question was timely and properly raised so as to give this Court jurisdiction to review the judgment on writ of certiorari.

The Petition for Writ of Certiorari contains no reference as to when or how the question of whether Petitioners have been deprived of a property interest without due process of law was raised in the state courts. The reason for such omission is that Petitioners never raised the question at any stage of the proceedings in the state courts, specifically including the petition for rehearing in the Supreme Court of Illinois. This Court, therefore, does not have jurisdiction to review the question. Fuller v. Oregon, 417 U.S. 40 (1974); Tacon v. Arizona, 410 U.S. 351 (1973).

II

THE FACTUAL ISSUES PETITIONERS CLAIM SHOULD BE REMANDED FOR TRIAL HAVE BEEN RENDERED MOOT BY THE ENACTMENT OF NEW STATUTES AND THE ADOPTION OF NEW REGULATIONS

The Petitioners are seeking a remand for hearing on their alleged claim of racial discrimination by the nominating committees. In their Complaint, Petitioners alleged that the Board's rules and regulations, then in effect, governing local nominating committees were unduly vague with no uniform standards of operation. Petitioners further claimed the local nominating committees made their nominations on the basis of race. 5/

5/ The allegations of racial discrimination by local nominating committees are vague and frivolous. Petitioners allege no specific instance of racial discrimination. Petitioners claim racial discrimination solely because in some instances Black applicants were appointed as principals of schools where the majority of the students were Black and white applicants were appointed to white schools. Pet. for Cert., p. 8. Petitioners ignore the substantial number of instances where this did not happen. Thus, the Petitioners totally ignore all appointments of new principals from the eligibility list between March 12, 1972 and August 28, 1974. During this period, new principals were appointed to 37 Black schools after being nominated by a local nominating committee. Twenty six out of the 37 appointees were not Black. R. C-231-33, lines 86-139. At the time of each of these appointments, there were still unappointed Blacks on the eligibility list. R. C-233. The affidavit of Penny Kajiwara, Chairperson of the Joan Arai Middle School Nominating Committee detailed the process of that nominating committee which resulted in the nomination and ultimate appointment of a Black to be principal although it is not a Black school. R. C-302-3.

On April 13, 1977, subsequent to the decision of the trial court, the Board adopted new regulations and guidelines governing local nominating committees. These uniform procedures specify that "The district superintendent is to inform the council of the procedures adopted by the Board of Education to comply with Title VI of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972 related to race and sex which may relate to the selection of a principal for that particular school." App. A, ¶B1. Thus, in meeting its obligations under federal law, the Board has reserved its right to designate the race or sex of the person to be nominated and will advise the local nominating committee of any such decision before the committee begins its selection process.

The state statute specifically authorizing local nominating committees, §34-8.2, became effective October 1, 1977, and provides:

> The recommendations of the local nominating committee shall not discriminate against any person based upon race, color, creed, national ancestry, sex, ethnic heritage or religious beliefs. Section 34-8.2B.

The relief requested by the Petitioners pertained only to the future conduct of the Board and local nominating committees. Petitioners did not request any relief regarding past appointments. By the enactment and adoption of §34-8.2 and the uniform guidelines, Petitioners have in effect received all the relief requested on this issue. The claim of racial discrimination is thus moot. Significantly, the Petitioners have alleged no instances of racial discrimination in the appointment of principals subsequent to April 13, 1977.

III

PETITIONERS HAVE NOT BEEN DEPRIVED OF ANY LEGALLY COGNIZABLE PROPERTY INTEREST AND, HENCE, HAVE NOT BEEN DENIED DUE PROCESS

Petitioners claim they were denied a property interest without due process of law. The property interest claimed is an entitlement to be appointed to a principalship because they "had

every reason...to expect appointment according to long established procedures." Pet. for Cert., p. 16. In order to establish this claim Petitioners must show (1) they have vested rights in positions they do not hold, and (2) vested rights in the appointment procedure. Petitioners fail to meet either aspect.

Property interests are not created by the Constitution. They are created and their dimensions are defined by state law. Board of Regents v. Ross, 408 U.S. 564, 577 (1972). Applying well established Illinois law, the Illinois Supreme Court held that there is no "property right inherent in holding a public office; that is, persons whose names appear on the eligibility list have no vested right in a principalship....(A) Candidate possessing a valid certificate from the Board of Examiners does not have an entitlement to a principalship", 6/ (Pet. for Cert., p. 14 a) and "there exists no vested right in any particular mode of procedure." Pet. for Cert., p. 13a.

Furthermore, the Petitioners, in their Complaint, alleged no vested rights and, by their choice of remedy, sought only prospective relief. If Petitioners had claimed vested rights to specific

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6/ Placement on eligibility lists creates no vested rights where such lists are subject to expiration. People ex rel. Lynch v. City of Chicago, 271 Ill.App. 360 (1933); People ex rel. Walsh v. City of Chicago, 226 Ill.App. 409 (1922). Principals' eligibility certificates expire after six years and in this case were extended by order of the lower court. R. C-237. See also, Webster v. Redmond, 599 F.2d 793 (7th Cir., 1979).

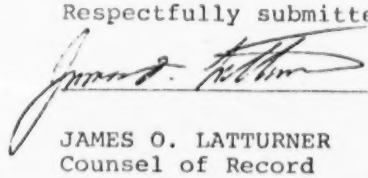
7/ There is no vested right unless there exists more than a mere expectation based upon an anticipated continuation of present laws. Goldblatt v. City of Chicago, 30 Ill.App.2d 211, 174 N.E.2d 222 (1st Dist., 1961). No person has a vested right in any rule or law or mode of procedure entitling him to insist that it remain unchanged for his benefit. Winter v. Bennett, 352 Ill. 441 (1933); Maki v. Frelk, 40 Ill.2d 193, 239 N.E.2d 445 (1968); Phillips Petroleum Co. v. City of Park Ridge, 16 Ill.App.2d 555, 149 N.E.2d 344, 347 (1st Dist., 1958). Procedures used in the appointment of principals may undergo modification and change. People ex rel. Cook v. Board of Education of the City of Chicago, 295 Ill.App. 41, 14 N.E.2d 520 (1st Dist., 1938).

appointments, they would have been required to join the individuals allegedly wrongfully appointed as necessary party defendants. See, Kadon v. Board of Fire and Police Commissioners, 45 Ill.App.2d 425, 195 N.E.2d 751 (1st Dist., 1964). They did not.

CONCLUSION

For the reasons stated above, Respondent Raquel Guerrero respectfully requests this Court to deny the Petition for a Writ of Certiorari.

Respectfully submitted,



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UNIFORM PROCEDURES FOR THE PARTICIPATION OF PRINCIPAL NOMINATING COMMITTEES IN THE TRANSFER OF PRINCIPALS AND THE APPOINTMENT OF PRINCIPALS FROM PRINCIPAL'S ELIGIBILITY LISTS

(Revised April 13, 1977)

RECOMMENDATION: Adopt uniform procedures for Principal Nominating Committees and procedures for the transfer of principals and the appointment of new principals from the principals' eligibility lists. (Words changed or added are underlined. Words deleted are crossed out.)

SUPPORTIVE DATA: Original guidelines and procedures were adopted in Board Report 71-15-1, January 21, 1971. These guidelines were revised in Board Report 73-41-1 on January 10, 1973 and amended in Board Report 73-1278-1 on November 14, 1973.

A Circuit Court ruling of December 20, 1976* decreed that, if the Chicago Board of Education desired to provide the opportunity for community input in the nomination of school principals, a uniform system of community input should be established.

DESCRIPTION:

~~A. Guidelines for Impaneling and Charging the Nominating Committee for local school councils.~~

A. Principal Nominating Committees, formed pursuant to the procedures stated in this Board Report, can advise and assist the General Superintendent, through appropriate staff, in recommending candidates to the Board for appointment as principals.

1. The School Code, Section 34-84, requires the appointment of eligible persons to the position of principal be made on the basis of merit.

2. The School Code, Section 34-8, requires the General Superintendent to recommend and the Board to appoint persons to the position of principal.

3. Principal nominating committees can provide community input to the principal selection process.

B. Procedures for the Participation of Local Councils in the Nomination of Principals:

1. The district superintendent shall meet with the local school council within ten days after the announcement in the personnel bulletin of a principalship vacancy in that school to notify the council that a nominating committee is to be formed. The district superintendent is to inform the council of the procedures adopted by the Board of Education to comply with Title VI of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972 related to race and sex which may relate to the selection of a principal for that particular school.

*Subject to appeals taken to Appellate Court of Illinois.

APPENDIX A

2. The Committee to nominate a principal (when a true* vacancy exists) must have representatives of the local PTA and/or the local Concerned Parents Organization, if such organizations exist in a school, among its voting members. (Board Report 71-623-2, amended July 28, 1971.)

3. Parents impaneled to serve on the Committee must reflect the racial and ethnic diversity of the student body.

4. The Chairperson of the nominating Committee must be a parent of a child in the school. The local school council shall determine the Chairperson. The council must impanel at least five members to serve on this Committee and its membership must reflect the same proportion of parents as the council at large, the minimum being 60%.

5. ~~Principal-Nominating-Committees-shall-be-democratically-constituted.~~ Meetings of the local school council to select a principal nominating committee shall be open to the public. Community input must be sought. The names of the persons selected to serve on the principal nominating committee must be made known to all the parents of the school.

6. ~~The-district-superintendent-shall,-within-a-week-after-the-vacancy-is-advertised,-contact-the-council-president-and-apprise-this-person-of-the-responsibility-of-the-council-for-the-establishment-of-a-Principalship-Nominating-Committee.-The-district-superintendent-shall-also-review-with-the-council-president-that-section-of-the-guidelines-relating-to-who-is-to-be-impaneled-to-serve-on-such-a-committee.~~

6. Within four school weeks, after a principalship vacancy is advertised, the district superintendent shall call an orientation meeting of the Principal Nominating Committee.

7. The district superintendent shall charge the Principal Nominating Committee with its responsibilities by doing the following:

   a. review the procedures with the committee as set forth in this report;

   b. discuss with the Committee factors to be considered as outlined in E-3; ~~curriculum-supervision-of-staff,-pupil-discipline,-community-involvement-and-other-areas-which-may-be-mutually-determined-to-be-important-for-that-particular-schools.~~

*A true vacancy is one which occurs as a result of transfer, retirement, resignation or death or other similar occurrences resulting in the permanent absence of the incumbent principal.

c. apprise the Committee that the district superintendent or his designee must be present at each session as a resource person and for the purpose of monitoring the procedures ~~and guidelines~~;

d. share with the Committee the names, qualifications and employment history and the letter of application of candidates who have applied for the position;

e. assist the Committee in the duplication of the pertinent materials ~~and grids which they may desire~~;

f. apprise the Committee that it must make its nominations within three months after the date of vacancy was advertised. If it does not make its nominations within the three-month period the General Superintendent will recommend to the Board of Education ~~will proceed without further~~ delay the appointment of a principal to the position. The three-month period shall not include the summer months July and August.

8. In the event that a local school council does not exist, the district superintendent will see that a local council is organize in accordance with adopted guidelines.

C. ~~The following Procedures will serve as guidelines when~~ for principals who are seeking transfer and candidates seeking appointment.

1. True principalship vacancies, together with the procedures adopted by the Board of Education to comply with Title VI of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972 related to race and sex which may relate to the selection of a principal for that particular school, will be announced, within two weeks of the occurrence of the vacancy, in personnel bulletins, in accordance with the established procedures.

2. Principals desiring to transfer from their present schools and eligible candidates seeking appointments will submit letters of application to the Assistant Superintendent of Personnel with carbon copies to the district superintendent in charge of the school to which transfer or appointment is desired.

3. All principals requesting transfer and eligible candidates seeking nomination will be interviewed by the nominating Committee. ~~The Committee will interview the applicants considered most promising.~~

4. ~~After appearing for an interview a candidate may not appear at any other interviews until the Board has officially appointed a candidate to the particular principalship vacancy~~

~~for which he was interviewed. However, if the Committee takes more than two weeks after names of candidates are available to the Committee to make a nomination, the candidate may be interviewed by another Committee.~~

D. Procedures when there are no principals seeking transfer or when a local school nominating committee has not submitted any nominations from among the applicants.

1. The district superintendent will provide six additional candidates from the eligibility list. These candidates will represent the broad range of candidates eligible for assignment.

2. ~~If more than one nominating Committee invites a given candidate to appear for an interview, the applicant must decide which invitation he will accept and so notify all the nominating Committees and also the Department of Personnel in writing.~~

2. The Principals' eligibility list will be maintained in the office of the General Superintendent of Schools. The Department of Personnel will make the appropriate source material available to ~~the Area Associate Superintendent and/or~~ the district superintendent. Such information will be made available by the district superintendent to the nominating Committee. If none of this group of six candidates should be nominated by a nominating Committee, an additional group of six names will be provided in the same manner prescribed in Item D-1, not to exceed a total of twelve candidates.

E. ~~Guidelines~~ Procedures for the Nominating Committee.

1. As the Principal Nominating Committee functions, Board of Education policies, procedures and practices, and the rules set forth in this document must be followed in all instances.

2. The District Superintendent shall furnish applicants for the position of principal with a written statement of procedures adopted by the Chicago Board of Education for the principal nomination process. A description of the characteristics of the school, student body and special programs shall be made available to the applicant.

3. The following factors are to be considered by principal nominating committees when evaluating applicants for the position of principal:

a. the procedures adopted by the Board of Education to comply with Title VI of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972 related to race and sex which may relate to the selection of a principal for that particular school.

b. degrees held, awards received, material published, and special or continued training in education or other fields;

c. employment history, including but not limited to past teaching and administrative positions held;

d. knowledge, experience, and attitude of the applicant concerning the school, student body, special programs, and the community;

e. special training or experience relevant to the particular needs of the school;

f. strengths or knowledge in major areas of responsibility such as curriculum, supervision of staff, pupil discipline;

4. After interviewing the applicants for the position of principal, considering all the material furnished to Principal Nominating Committee by the applicants, district superintendent, and school council, and evaluating the applicants in accordance with the above procedures, the Principal Nominating Committee is to furnish the district superintendent, in writing, the names of its nominees, but in no case shall this list be less than three, together with a statement of the basis for the committee's decision for each nomination and the committee's preference, if any, among those nominated.

5. The district superintendent shall review and consider the nominating committee's recommendations and, within five school days, forward to the Deputy Superintendent, Field Services, the recommendations of the committee and any additional recommendations the district superintendent may wish to make. The Deputy Superintendent, Field Services, shall review and consider the recommendations of the nominating committee, and within five school days, forward to the General Superintendent the recommendations of the nominating committee and the district superintendent, along with any additional recommendations the Deputy Superintendent, Field Services may wish to make. The General Superintendent shall review and consider the recommendations of the nominating committee, the district superintendent and the Deputy Superintendent, Field Services, and then make a recommendation to the Board of Education.

6. No applicant or candidate may be rejected on the basis of race, color, creed, sex, national origin, ancestry or age except where the procedures adopted by the Board of Education to comply with Title VI of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972 related to race and sex which may relate to the selection of a principal for that particular school.

7. The State law requires that the General Superintendent recommends and the Board of Education appoints a person to the position of principal of a particular school. Neither the Board of Education nor the General Superintendent shall abdicate their responsibility to select and appoint persons to be principals to any other group of persons including, but not limited to, the community nominating committees.

8. The names of persons selected as members of the Principal Nominating Committee shall be shared with the local school council and made available in the district office.

9. Interviews must be conducted in a Chicago Public School facility.

10. If the nominating Committee has not completed its task by the end of two months, the district superintendent shall inform the Committee in writing of the three-month time limit specified by the Principal Nominating Committee guidelines.

11. If the nominating Committee has not completed its task within the three-month period, the district superintendent will recommend a candidate or candidates to the Deputy Superintendent, Field Services, in order to initiate a nomination by staff within two weeks to the General Superintendent.

12. Nothing in these procedures is to preclude the Local School Council from notifying the district superintendent, in writing, that they wish to waive their opportunity to participate in the nominating process and request that a principal be assigned to the school on the recommendation of the district superintendent, Deputy Superintendent for Field Services, and the General Superintendent.

These guidelines and procedures will become effective upon adoption by the Board of Education of the City of Chicago.

FINANCIAL: No additional cost to the Board of Education.

Respectfully submitted,

JOSEPH P. HANNON
General Superintendent of Schools

Prepared and Approved - Staff Committee:

BESSIE F. LAWRENCE
Deputy Superintendent - Field Services

GUY D. BRUNETTI
Assistant Superintendent - Employee Relations

MARGARET M. HARRIGAN
District 7 Superintendent

SHIRLEY E. STACK
District 1 Superintendent

Noted:

ROBERT STICKLES
Controller

Approved As To Legal Form:

MICHAEL J. MURRAY
Attorney

Members of Staff Committee:

MANFORD BYRD, JR.
Deputy Superintendent - Instruction and Pupil Services

BESSIE F. LAWRENCE
Deputy Superintendent - Field Services

GUY D. BRUNETTI
Assistant Superintendent - Employee Relation

MARGARET M. HARRIGAN
District 7 Superintendent

JACK MITCHELL
District 21 Superintendent

SHIRLEY E. STACK
District 1 Superintendent

APPEAL TO THE APPELLATE COURT OF ILLINOIS - FIRST DISTRICT
FROM THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

IRIS M. MAITER, SYLVIA ASLLANI, JOSEPH M. BECHINA, RUTH GOLDRICH, ALMA M. HECK, JOHN JONES, BERNARD KARLIN, NORMAN KREMEN, WINIFRED M. SZPARA MAKOWSKI, DOROTHEA MODERHOCK, JUDITH L. BAKER, FREDERICK BARTH, ELEANOR BRAZIER, JAMES BERNERO, MARILYN BESSLER, FRED W. DELANEY, JUNE C. DUDECK, MARJORIE A. DWY, ELIZABETH A. EVAN, EDITH B. EDINGTON, SAMUEL L. DOLNICK, JAMES AHERN, SAMUEL ALTSHULER, JEANNETTE ANDERSON, LOUIS ASHER, JAMES BAILEY, SONJA BECVAR, JEWEL BEIFUSS, DOROTHY BERG, BRUCE BERNDT,

Plaintiffs-Appellees, Separate-Appellants and Cross-Appellants.

v.

No. 75 L 10943

CHICAGO BOARD OF EDUCATION AND DR. JAMES F. REDMOND, GENERAL SUPERINTENDENT OF SCHOOLS,

Defendants-Appellees, Separate-Appellees and Cross-Appellees.

v.

DISTRICT #21 PARENT EDUCATION COUNCIL, GWENDOLYN COSBY, IONA BELL, ET AL.,

Intervenors-Appellants, Separate-Appellees and Cross-Appellees.

v.

MIDWEST COMMUNITY COUNCIL, NANCY JEFFERSON; WILLIAM K. SULLIVAN SCHOOL PTA, FRANCES GARCIA; PILSEN NEIGHBORS COMMUNITY COUNCIL, RAQUEL GUERRERO; NORTHWEST COMMUNITY ORGANIZATION; LAKE VIEW SCHOOLS COALITION, NANCY RODINSKI; JOAN ARAI, MIDDLE SCHOOL PARENTS SCHOOL, LAURA GRACE, PENNY KAJIWARA,

Intervenors-Appellees, Separate-Appellees and Cross-Appellees.

NOTICE OF SEPARATE APPEAL AND CROSS-APPEAL

The plaintiffs-appellees, separate-appellants and cross-appellants IRIS M. MAITER, SYLVIA ASLLANI, JOSEPH M. BECHINA, RUTH GOLDRICH, ALMA M. HECK, JOHN JONES, BERNARD KARLIN, NORMAN KREMEN, WINIFRED M. SZPARA MAKOWSKI, DOROTHEA MODERHOCK, JUDITH L. BAKER,

FREDERICK BARTH, ELEANOR BRAZIER, JAMES BERNERO, MARILYN BESSLER, FRED W. DELANEY, JUNE C. DUDECK, MARJORIE A. DWY, ELIZABETH A. EVAN, EDITH B. EDINGTON, SAMUEL L. DOLNICK, JAMES AHERN, SAMUEL ALTSHULER, JEANNETTE ANDERSON, LOUIS ASHER, JAMES BAILEY, SONJA BECVAR, JEWEL BEIFUSS, DOROTHY BERG, BRUCE BERNDT hereby appeal as follows:

1. From the Order entered September 28, 1976 granting leave to the intervenors herein to intervene in this suit and pray that said Order be reversed in its entirety and that the intervenors herein be ordered dismissed as parties to this suit and that all documents and briefs filed on their behalf, including all documents filed in the Circuit Court as well as all documents filed in this cause, including notices of appeal and briefs, be ordered stricken.

2. From the Judgment Order entered December 20, 1976 and specifically that portion of the Order which provides as follows:

> "2. That rank order on the Principals' eligibility examination need not be used by the Board as the sole criteria of merit in the appointment of principals to individual schools, provided however, that until a uniform system of community input is established..."

and pray that the same be reversed in its entirety and that this Court direct the Lower Court to enter a Judgment Order providing as follows:

> A. That the rules and procedures establishing nominating committees of local school councils are in violation of the statutory authority conferred upon the Board of Education and in violation of the specific provisions of Section 34-84 relating to the appointment of principals; and that the rules, practices and procedures of the General Superintendent and the Board of Education in being governed by the recommendations of these local

school councils in making appointments to the position of principal are in violation of the statutes governing the selection and appointment of principals within the Chicago school district.

B. That Section 34-84 of the School Code of Illinois requires that the Board of Education of the City of Chicago make appointments to the position of principal in rank order from eligibility lists prepared by the Board of Examiners, first exhausting the prior 1970 eligibility list before proceeding with the subsequent 1974 eligibility list.

C. That the Court having found and declared the practices and procedures of the Chicago Board of Education as contained in Board Report 73-1278-1 to be in violation of the statutory authority conferred on the Board, it is ordered that all persons on the 1970 eligibility list who have been subjected to these illegal practices and procedures and who have been by-passed for appointment are entitled to appointment as principal and that the Board is hereby directed to appoint to the position of principal in rank order the persons remaining on the 1970 eligibility list for principal.

IRIS M. MAITER, SYLVIA ASLLANI, JOSEPH M. BECHINA, RUTH GOLDRICH, ALMA M. HECK, JOHN JONES, BERNARD KARLIN, NORMAN KREMEN, WINIFRED M. SZPARA MAKOWSKI, DOROTHEA MODERHOCK, JUDITH L. BAKER, FREDERICK BARTH, ELEANOR BRAZIER, JAMES BERNERO, MARILYN BESSLER, FRED W. DELANEY, JUNE C. DUDECK, MARJORIE A. DWY, ELIZABETH A. EVAN, EDITH B. EDINGTON, SAMUEL L. DOLNICK, JAMES AHERN, SAMUEL ALTSHULER, JEANNETTE ANDERSON, LOUIS ASHER, JAMES BAILEY, SONJA BECVAR, JEWEL BEIFUSS, DOROTHY BERG, BRUCE BERNDT

By: Ronald S. Cope

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SUPREME COURT, U.S.

NO. 80-1462

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1980

IRIS M. MAITER, et al.,

Petitioners,

v.

CHICAGO BOARD OF EDUCATION, et al., and DISTRICT #21 PARENT EDUCATION COUNCIL, et al.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

The Respondent Raquel Guerrero moves for leave to proceed in forma pauperis pursuant to Supreme Court Rule 46.

The affidavit of the Respondent in support of this motion is attached hereto.

Respectfully submitted,

JAMES O. LATTURNER
Counsel of Record
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(312) 769-1015

MARILYN F. JOHNSON

Attorneys for Respondent
Raquel Guerrero

NO. 80-1462

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1980

IRIS M. MAITER, et al.,
Petitioners,
v.
CHICAGO BOARD OF EDUCATION, et al., and DISTRICT #21 PARENT EDUCATION COUNCIL, et al.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

A F F I D A V I T

STATE OF ILLINOIS)
COUNTY OF C O O K) SS:

I, RAQUEL GUERRERO, being first duly sworn, depose and say that I am a Respondent in the above-entitled case; that in support of my motion to proceed in this cause without being required to prepay fees, costs or give security therefor, I state that because of my poverty, I am unable to pay the costs of said proceeding or to give security therefor, that I believe I am entitled to redress.

I further swear that the responses which I have made to the questions and instructions below pertaining to my ability to pay the costs of prosecuting the appeal are true.

1. Are you presently employed?

Yes. Pilsen YMCA, 1922 S. Laflin, Chicago, Illinois, approximately $710.00 monthly.

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interests, dividends, or other source?

No.

3. Do you own any cash or checking or savings account?

Checking Account of $25.00.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

No.

5. List the persons who are dependent upon you for support and state your relationship to those persons.

My six children; Estella, Cynthia, Ramiro, Leticia, Fred and Hortencie.

I understand that a false statement or answer to any questions in this Affidavit will subject me to penalties for perjury.

Raquel Guerrero
RAQUEL GUERRERO

Subscribed and sworn to
before me
March 23, 1981
Diane Stone
Notary Public

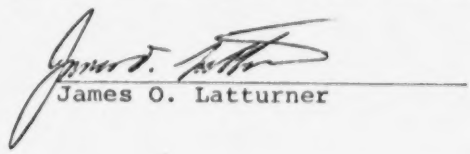
CERTIFICATE OF SERVICE

James O. Latturner, counsel of record herein, certifies that the foregoing Brief of Respondent Raquel Guerrero In Opposition To Petition For A Writ Of Certiorari To The Supreme Court Of Illinois and Motion For Leave To Proceed In Forma Pauperis were served upon

Michael Murray, Esq.
Chicago Board of Education
228 North LaSalle Street
Chicago, Illinois 60601

Ronald S. Cope, Esq.
Ancel, Glink, Diamond & Murphy, P.C.
180 North LaSalle Street
Suite 2600
Chicago, Illinois 60601

by U.S. Mail, postage prepaid, on March 24, 1981, before 5:00 p.m.



James O. Latturner

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